



Committee on State Affairs

**Wednesday, March 7, 2007
1:00 PM – 3:00 PM
Morris Hall**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on State Affairs

Start Date and Time: Wednesday, March 07, 2007 01:00 pm

End Date and Time: Wednesday, March 07, 2007 03:00 pm

Location: Morris Hall (17 HOB)

Duration: 2.00 hrs

Workshop on the following:

Ad Valorem Tax Relief for Renters

HB 473 Residential Property Just Valuation by Schenck

PCB GEAC 07-02 relating to a public records exemption for economic development agencies

PCB GEAC 07-03 relating to the Institute of Food and Agricultural Sciences Supplemental Retirement Program

PCB GEAC 07-06 relating to the Open Government Sunset Review of the public records exemption for public records requests made by law enforcement agencies

PCB GEAC 07-11 relating to the Open Government Sunset Review of the public records exemption for information identifying participants in the Public Employee Optional Retirement Program

PCB GEAC 07-12 relating to the Open Government Sunset Review of the public records exemption for telecommunication audits

PCB GEAC 07-13 relating to the Open Government Sunset Review of the public records exemption for the abandoned newborn program

PCB GEAC 07-14 relating to the Open Government Sunset Review of the public records exemption regarding consumer complaints and inquiries handled by the Department of Financial Services and the Office of Insurance Regulation

PCB GEAC 07-15 relating to the Open Government Sunset Review of the public records exemption for work papers held by the Department of Financial Services and the Office of Insurance Regulation

PCB GEAC 07-16 relating to the Open Government Sunset Review of the public records exemption for unclaimed property reports

Consideration of the following bill(s):

HB 547 Employment Requirements for Law Enforcement Personnel by Patterson

NOTICE FINALIZED on 03/05/2007 15:57 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 547
SPONSOR(S): Patterson
TIED BILLS:

Employment Requirements for Law Enforcement Personnel

IDEN./SIM. BILLS: SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u></u>	Ligas <u>AKL</u>	Williamson <u>RAW</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill requires a law enforcement officer, correctional officer, or correctional probation officer to successfully pass a physical examination in order to presumptively claim that his or her tuberculosis, heart disease, or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty. It also authorizes an agency that employs law enforcement personnel to establish standards regarding the use of tobacco.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – This bill changes the entitlement that law enforcement officers, correctional officers, and correctional probation officers have to the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

B. EFFECT OF PROPOSED CHANGES:

Disability Presumptions

Section 112.18, F.S., provides that “any condition or impairment of health” caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is presumed to be accidental and to have been suffered in the line of duty for firefighters,¹ law enforcement officers,² correctional officers,³ or correctional probation officers.⁴ This presumption may be rebutted by “competent evidence.”⁵

Correctional officers and correctional probation officers are entitled to this presumption without a physical examination.⁶ Firefighters and law enforcement officers, however, must successfully pass a physical examination “upon entering into such service” as a firefighter or law enforcement officer.⁷

The timing of the “upon entering into such service” examination requirement generally is interpreted in one of two ways: (1) the *first* point in time when a person first begins to work as a firefighter or law enforcement officer; or (2) the point in time when a person begins to work for a particular agency or employer as a firefighter or law enforcement officer.⁸

The potential conflict between the two interpretations becomes particularly evident in light of s. 943.13(6), F.S., which requires officers to pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner. Although this section is silent as to the timing of the examination, the Criminal Justice Standards and Training Commission is authorized to establish the “specifications” for the examination, which it has done through rule 11B-27.002(1)(d), *Florida Administrative Code*, requiring the completion of a physician’s assessment with each new employment or appointment of an officer. This rule also prohibits an employing agency from using a physician’s assessment that was prepared for another employing agency.

The bill resolves the potential conflict in the timing of the examination for purposes of the presumption in s. 112.18, F.S., by adding an eligibility requirement to the examination required by s. 943.13(6), F.S. To be eligible for the presumption, the bill requires law enforcement officers, correctional officers, and

¹ The firefighter must be a state, municipal, county, port authority, special tax district, or fire control district firefighter.

² Fla. Stat. § 943.10(1) (2006).

³ Fla. Stat. § 943.10(2) (2006).

⁴ Fla. Stat. § 943.10(3) (2006).

⁵ Fla. Stat. § 112.18(1) (2006).

⁶ *State v. Reese*, 911 So.2d 1291 (Fla. 1st DCA 2005) (holding that the plain language of the statutes does not require completion of a pre-employment physical as a condition precedent to the entitlement to the statutory presumption as is the case with firefighters and law enforcement officers).

⁷ Fla. Stat. § 112.18(1) (2006).

⁸ There appears to be only one case which has interpreted this examination requirement, *Cumbe v. City of Milton*, 496 So.2d 923 (1st DCA 1986). In *Cumbe*, a firefighter who did not undergo a physical examination “upon entering his employment” was not entitled to the statutory presumption in s. 112.18, F.S. Yet, interpreting the phrase “upon entering into such service” as “upon entering his employment” does not resolve the two conflicting timing interpretations since both points of time were the same in *Cumbe*.

correctional probation officers⁹ to successfully pass this required employment/appointment examination with no evidence of tuberculosis, heart disease, or hypertension upon entering into service with the employing agency.¹⁰ This change is particularly significant for correctional officers and correctional probation officers, who currently are not required to have physical examinations in order to receive the presumption in s. 112.18, F.S. The bill also prohibits the use of a physical examination from a former employing agency for purposes of claiming the presumption.

Application of the Revised Eligibility Requirements

Although the bill is silent as to whether the changes that effect the operation of s. 112.18, F.S., apply retroactively or prospectively, these changes are classified as either "procedural" or "substantive." Procedural amendments apply retroactively since there is no vested right in any given procedure.¹¹ For example, adding officers to the list of employees entitled to the statutory presumption was a procedural enactment.¹² Thus, to the extent that this change can be characterized as a "burden of proof enactment," it is a procedural change and will apply retroactively unless otherwise limited. Yet, to the extent this change affects duties and rights or impacts benefits that may be received or the entitlement to services, it may be substantive and only apply prospectively.

Tobacco Use Standards

Section 943.137, F.S., allows employing agencies to establish qualifications and standards for employment, appointment, training, or promotion of officers that exceed the minimum requirements set by law. The qualifications of an employing agency that exceed the minimum employment or basic recruit training course established by the Criminal Justice Standards and Training Commission are binding on individuals affected and must be recognized by the commission. This bill, however, specifically provides the authority to set tobacco-use standards under this section.

C. SECTION DIRECTORY:

Section 1 amends s. 943.13, F.S., to revise the operation of the presumption in s. 112.18, F.S.

Section 2 amends s. 943.137, F.S., to authorize the establishment of tobacco-use standards.

Section 3 provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill could have a positive fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to create, modify, amend, or eliminate a revenue source for local governments.

⁹ Fla. Stat. § 943.10(1), (2), & (3) (2006).

¹⁰ Fla. Stat. § 943.10(4) (2006).

¹¹ *Litvin v. St. Lucie County Sheriff's Dep't*, 599 So.2d 1353 (Fla. 1st DCA), rev. denied, 613 So.2d 6 (Fla. 1992), cert. denied, 508 U.S. 913, 113 S.Ct. 2350, 124 L.Ed.2d 258 (1993).

¹² *State v. Reese*, 911 So.2d 1292 (1st DCA 2005).

2. Expenditures:

This bill does not appear to create, modify, amend, or eliminate local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

According to the Department of Financial Services (DFS), 184 claims have been filed since January 1, 2006, under the presumption given law enforcement and correctional officers under s. 112.81, F.S. Of the reported claims, 142 are from employees of the Department of Corrections (DOC) and 56 are litigated. As of December 31, 2006, the DOC claims have an incurred value of \$3,892,239. The total amount of the incurred value of the presumption claims filed during the same period is \$4,512,288.¹³

Correctional officers are the only employment class who are not required to have a pre-employment physical exam to meet the presumption. The requirement of a pre-employment physical exam for correctional officers should have a positive fiscal impact on the Risk Management Fund and should reduce the filing of claims. The amount of this fiscal impact is unknown because correctional officers currently are not required to have a pre-employment examination to qualify for the "presumption". Therefore, DFS is unable to determine how many officers would not, as a result of the physical examination, qualify for the "presumption" due to a pre-existing condition.¹⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Changing Section 112.18, Florida Statutes, Instead

The potential effect of subsection 943.13(6), F.S., is to change the operation of the presumption provided in section 112.18, F.S. As such, the sponsor may wish to consider making these changes directly in section 112.18, F.S.

Other Comments: Department of Management Services

The Department of Management Services states:

The inclusion of tobacco-use standards in the minimum qualifications for appointment, training, and promotion of currently employed bargaining unit members of the Security Services, Special

¹³ Dept. of Financial Services SB 472 (2007) Agency Bill Analysis (on file with department and the Committee on State Affairs).

¹⁴ *Id.*

Agent and Law Enforcement collective bargaining units have an impact on the terms and conditions of employment for the subject employees. Although agencies have the management right to establish minimum tobacco-use standards, the impact of such change will need to be collectively bargained.¹⁵

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

¹⁵ Dept. of Management Services HB 547 (2007) Agency Bill Analysis (on file with department and the committee).

HB 547

2007

1 A bill to be entitled
2 An act relating to employment requirements for law
3 enforcement personnel; amending s. 943.13, F.S.; revising
4 the presumption of disability for certain law enforcement,
5 correctional, and correctional probation officers;
6 amending s. 943.137, F.S.; authorizing an agency that
7 employs law enforcement personnel to establish tobacco-use
8 standards; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (6) of section 943.13, Florida
13 Statutes, is amended to read:

14 943.13 Officers' minimum qualifications for employment or
15 appointment.--On or after October 1, 1984, any person employed
16 or appointed as a full-time, part-time, or auxiliary law
17 enforcement officer or correctional officer; on or after October
18 1, 1986, any person employed as a full-time, part-time, or
19 auxiliary correctional probation officer; and on or after
20 October 1, 1986, any person employed as a full-time, part-time,
21 or auxiliary correctional officer by a private entity under
22 contract to the Department of Corrections, to a county
23 commission, or to the Department of Management Services shall:

24 (6) Have passed a physical examination by a licensed
25 physician, physician assistant, or certified advanced registered
26 nurse practitioner, based on specifications established by the
27 commission. In order to be eligible for the presumption set
28 forth in s. 112.18 while employed with an employing agency, a

HB 547

2007

law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required by this subsection upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.

Section 2. Subsection (1) of section 943.137, Florida Statutes, is amended to read:

943.137 Establishment of qualifications and standards above the minimum.--

(1) Nothing herein may be construed to preclude an employing agency from establishing qualifications and standards for employment, appointment, training, or promotion of officers that exceed the minimum requirements set by ss. 943.13 and 943.17, including establishing tobacco-use standards.

Section 3. This act shall take effect October 1, 2007.

COMMITTEE ON STATE AFFAIRS
WEDNESDAY, MARCH 7, 2007

TABLE OF CONTENTS

- Tab 1 AD VALOREM TAX RELIEF FOR RENTERS
- Section 6, Article VII of the Florida Constitution
- Tab 2 HB 473, RESIDENTIAL PROPERTY JUST VALUATION
- HB 473
- Tab 3 PUBLIC RECORDS EXEMPTION FOR ECONOMIC DEVELOPMENT AGENCIES
- Summary
 - Draft of PCB GEAC 07-02
 - Section 288.075, Florida Statutes
 - Section 288.1067, Florida Statutes
- Tab 4 INSTITUTE OF FOOD AND AGRICULTURAL SCIENCES SUPPLEMENTAL RETIREMENT PROGRAM
- Summary
 - Draft of PCB GEAC 07-03
- Tab 5 OVERVIEW OF THE OPEN GOVERNMENT SUNSET REVIEW ACT
- Open Government Sunset Review Act (OGSR)
- Tab 6 OGSR REGARDING PUBLIC RECORDS REQUESTS MADE BY LAW ENFORCEMENT AGENCIES
- Summary
 - Draft of PCB GEAC 07-06
- Tab 7 OGSR REGARDING INFORMATION IDENTIFYING PARTICIPANTS IN THE PUBLIC EMPLOYEE OPTIONAL RETIREMENT PROGRAM
- Summary
 - Draft of PCB GEAC 07-11
- Tab 8 OGSR REGARDING TELECOMMUNICATION AUDITS
- Summary
 - Draft of PCB GEAC 07-12
 - Section 36 of Chapter 2001-140, Laws of Florida
 - Section 166.236, Florida Statutes
- Tab 9 OGSR REGARDING THE ABANDONED NEWBORN PROGRAM
- Summary
 - Draft of PCB GEAC 07-13

**Tab 10 OGSR REGARDING CONSUMER COMPLAINTS AND INQUIRIES HANDLED BY THE
DEPARTMENT OF FINANCIAL SERVICES AND THE OFFICE OF INSURANCE
REGULATION**

- Summary
- Draft of PCB GEAC 07-14

**Tab 11 OGSR REGARDING WORK PAPERS HELD BY THE DEPARTMENT OF FINANCIAL
SERVICES AND THE OFFICE OF INSURANCE REGULATION**

- Summary
- Draft of PCB GEAC 07-15

Tab 12 OGSR REGARDING UNCLAIMED PROPERTY REPORTS

- Summary
- Draft of PCB GEAC 07-16

ARTICLE VII
FINANCE AND TAXATION

SECTION 6. HOMESTEAD EXEMPTIONS.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled and if the owner is not entitled to the exemption provided in subsection (d).

(d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: fifteen thousand dollars with respect to 1980 assessments; twenty thousand dollars with respect to 1981 assessments; twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter. However, such increase shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.

(e) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(f) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding fifty thousand dollars to any person

who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(g) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

History.—Am. S.J.R. 1-B, 1979; adopted 1980; Am. S.J.R. 4-E, 1980; adopted 1980; Am. H.J.R. 3151, 1998; adopted 1998; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998; Am. H.J.R. 353, 2006; adopted 2006; Am. H.J.R. 631, 2006; adopted 2006.

HB 473

2007

1 A bill to be entitled

2 An act relating to residential property just valuation;
3 amending s. 193.011, F.S.; providing an alternative
4 methodology for deriving just valuation of residential
5 property; providing for retroactive application; providing
6 an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 193.011, Florida Statutes, is amended
11 to read:

12 193.011 Factors to consider in deriving just valuation.--

13 (1) In arriving at just valuation as required under s. 4,
14 Art. VII of the State Constitution, the property appraiser shall
15 take into consideration the following factors:

16 (a)~~(1)~~ The present cash value of the property, which is
17 the amount a willing purchaser would pay a willing seller,
18 exclusive of reasonable fees and costs of purchase, in cash or
19 the immediate equivalent thereof in a transaction at arm's
20 length;

21 (b)~~(2)~~ The highest and best use to which the property can
22 be expected to be put in the immediate future and the present
23 use of the property, taking into consideration any applicable
24 judicial limitation, local or state land use regulation, or
25 historic preservation ordinance, and considering any moratorium
26 imposed by executive order, law, ordinance, regulation,
27 resolution, or proclamation adopted by any governmental body or
28 agency or the Governor when the moratorium or judicial

HB 473

2007

limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

~~(c)(3)~~ The location of said property;

~~(d)(4)~~ The quantity or size of said property;

~~(e)(5)~~ The cost of said property and the present replacement value of any improvements thereon;

~~(f)(6)~~ The condition of said property;

~~(g)(7)~~ The income from said property; and

~~(h)(8)~~ The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

(2) In lieu of the factors specified in subsection (1), in arriving at just valuation of residential property as required by s. 4, Art. VII of the State Constitution, the property appraiser may consider the purchase price of the property,

HB 473

2007

57 exclusive of any portion of the price attributable to payments
58 for household furnishing or other items of personal property,
59 the assessed value of a comparable home in the same area that
60 has been continuously assessed as provided in s. 4(c), Art. VII
61 of the State Constitution for at least 5 years, and the assessed
62 value of a comparable home in the same area that has been
63 continuously assessed as provided in s. 4(c), Art. VII of the
64 State Constitution for at least 10 years, and use the average of
65 the three values as the just valuation.

66 Section 2. This act shall take effect upon becoming a law
67 and shall apply retroactively to assessments made for tax years
68 beginning January 1, 2002.

PCB GEAC 07-02 Summary

Current Public Records Exemptions for Economic Development Agencies

Currently, upon written request, certain business records are confidential and exempt from public records requirements when held by an economic development agency. Specifically, business plans, intentions, and interests to locate, relocate, or expand business activities in Florida are confidential and exempt for 12 months. The period of confidentiality may be extended for an additional 12 months if the business demonstrates that it is continuing its consideration to locate, relocate, or expand its activities in Florida. Also, trade secrets are confidential and exempt for 10 years.

In addition to this exemption, current law provides a public records exemption for certain information held by an economic development agency pursuant to an economic incentive program. Information specifically made confidential and exempt includes:

- Employer identification numbers, unemployment compensation account numbers, and Florida sales tax registration numbers;
- Trade secrets;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;
- Anticipated wages for new jobs to be created;
- The average wage paid by the business for new jobs created, detailed proprietary business information or employee personal identifying information used to demonstrate wage and job creation requirements;
- Proprietary business information regarding capital investment in certain circumstances; and
- The amount of Florida taxes paid.

The information is protected during the period of time that a business participates in an economic incentive program, with the exception of trade secrets, which remain confidential and exempt after the duration of the economic incentive agreement.

This exemption relates to the following incentive programs:

- Capital Investment Tax Credit program, s. 220.191, F.S.;
- Qualified Defense Contractor (QDC) tax refund program, s. 288.1045, F.S.;
- Qualified Target Industry (QTI) tax refund program, s. 288.106, F.S.;
- High Impact Performance Incentive (HIPI) grants program, s. 288.108, F.S.;
- Quick Action Closing Fund, s. 288.1088, F.S.;
- Innovation Incentive Program, s. 288.1089, F.S.; and
- Innovation Incentive Program, which is created in ch. 2006-55, L.O.F.

2006 – 2007 Interim Review

Public debate during the 2006 Legislative Session and related staff research indicated that the exemption warranted further review. As such, the public records exemptions were reviewed during the interim by committee staff.

Proposal

This proposal is a result of that interim review.

The proposal recommends placing the two exemptions in the same section of law in order to make location of those exemptions easier. It provides a section for definitions and creates a definition for "proprietary confidential business information". This definition was created based upon other definitions for the same term found throughout the statutes.

The public records exemption for plans, intentions, and interests was maintained without substantive changes.

The 10-year expiration on the public records exemption for trade secrets was removed. This proposal recommends maintain the exemption for trade secrets indefinitely due to the nature of the information.

The exemption for economic incentive programs was amended to prohibit release of a business' federal employment identification number, unemployment compensation account number, and Florida sales tax registration number indefinitely.

Finally, the exemption provides a five-year review date and a statement of public necessity.

DRAFT - PCB GEAC 07-02

ORIGINAL

2007

A bill to be entitled

An act relating to public records exemptions for economic development agencies; amending s. 288.075, F.S.; defining the terms "proprietary confidential business information" and "trade secret"; extending the period of confidentiality for trade secrets; extending the period of confidentiality for a business's federal employment identification number, unemployment compensation account number, and Florida sales tax registration number; providing for the confidentiality of information that would identify wages, taxes, and other employment information; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; repealing s. 288.1067, F.S., relating to the confidentiality of records held by the Office of Tourism, Trade, and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities, and their employees or agents; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 288.075, Florida Statutes, is amended to read:

288.075 Confidentiality of records.--

(1) DEFINITIONS.--As used in this section, the term:

(a) "Economic development agency" means:

1.~~(a)~~ The Office of Tourism, Trade, and Economic Development;

2.~~(b)~~ Any industrial development authority created in

DRAFT - PCB GEAC 07-02

ORIGINAL

2007

accordance with part III of chapter 159 or by special law;

~~3.(e)~~ Space Florida created in part II of chapter 331;

~~4.(d)~~ The public economic development agency of a county or municipality;

~~5.(e)~~ Any research and development authority created in accordance with part V of chapter 159; or

~~6.(f)~~ Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

(b) "Proprietary confidential business information" means information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this section; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

1. Business plans.

2. Internal auditing controls and reports of internal auditors.

3. Reports of external auditors for privately held companies.

(c) "Trade secret" has the same meaning as in s. 688.002.

(2) PLANS, INTENTIONS, AND INTERESTS.--

(a) Upon written request from a private corporation,

DRAFT - PCB GEAC 07-02

ORIGINAL

2007

partnership, or person, information held by an economic development agency concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first.

(b)(3) An economic development agency may extend the period of confidentiality specified in paragraph (a) ~~subsection (2)~~ for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. Such a request for an extension in the period of confidentiality must be received prior to the expiration of any confidentiality originally provided under this section.

(c) A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information under this subsection until 90 days after the information is made public unless:

1. The public officer or employee is acting in an official capacity;

2. The agreement does not accrue to the personal benefit of such public officer or employee; and

DRAFT - PCB GEAC 07-02

ORIGINAL

2007

3. In the professional judgment of the officer or employee,
the agreement is necessary to effectuate an economic development
project.

~~(3)(4) TRADE SECRETS.--Trade secrets held by, as defined by~~
~~s. 812.081, contained in the records of an economic development~~
~~agency relating to the plans, intentions, or interests of a~~
~~corporation, partnership, or person who has requested~~
~~confidentiality pursuant to this section are confidential and~~
~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~
~~Constitution for 10 years after the date an economic development~~
~~agency receives a request for confidentiality or until otherwise~~
~~disclosed, whichever occurs first.~~

(4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.--
Proprietary confidential business information held by an economic
development agency is confidential and exempt from s. 119.07(1)
and s. 24(a), Art. I of the State Constitution.

(5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.--A
federal employer identification number, unemployment compensation
account number, or Florida sales tax registration number held by
an economic development agency is confidential and exempt from s.
119.07(1) and s. 24(a), Art. I of the State Constitution.

(6) ECONOMIC INCENTIVE PROGRAMS.--

(a) The following information held by an economic
development agency pursuant to the administration of an economic
incentive program for qualified businesses is confidential and
exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution, for a period not to exceed the duration of the tax
refund, tax credit, or incentive agreement:

1. The percentage of the business's sales occurring outside

DRAFT - PCB GEAC 07-02

ORIGINAL

2007

this state and, for businesses applying under s. 288.1045, the percentage of the business's gross receipts derived from Department of Defense contracts during the 5 years immediately preceding the date the business's application is submitted.

2. The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.

3. The average wage actually paid by the business for those jobs created by the project or an employee's personal identifying information which is held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job-creation requirements of such programs.

4. The amount of:

a. Taxes on sales, use, and other transactions which are paid pursuant to chapter 212;

b. Corporate income taxes paid pursuant to chapter 220;

c. Intangible personal property taxes paid pursuant to chapter 199;

d. Emergency excise taxes paid pursuant to chapter 221;

e. Insurance premium taxes paid pursuant to chapter 624;

f. Excise taxes paid on documents pursuant to chapter 201;

or

g. Ad valorem taxes paid, as defined in s. 220.03(1).

(b)1. An economic development agency may release:

a. Names of qualified businesses.

b. The total number of jobs each business expects to create.

c. The total number of jobs created by each business.

DRAFT - PCB GEAC 07-02

ORIGINAL

2007

d. The amount of tax refunds, tax credits, or incentives awarded to and claimed by each business.

2. For a business applying for certification under s. 288.1045 which is based on obtaining a new Department of Defense contract, the total number of jobs expected and the amount of tax refunds claimed may not be released until the new Department of Defense contract is awarded.

(c) An economic development agency may publish statistics in the aggregate and classified so as to prevent the identification of a single qualified applicant.

~~(5) A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information pursuant to this section until 90 days after the information is made public unless:~~

~~(a) The public officer or employee is acting in an official capacity;~~

~~(b) The agreement does not accrue to the personal benefit of such public officer or employee; and~~

~~(c) In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.~~

(7)(6) PENALTIES.--Any person who is an employee of an economic development agency who violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) OPEN GOVERNMENT SUNSET REVIEW ACT.--This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012,

DRAFT - PCB GEAC 07-02

ORIGINAL

2007

unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to provide confidentiality for certain information concerning businesses or of a business participating in a state incentive program held by an economic development agency. The disclosure of information such as trade secrets, proprietary confidential business information, or other business information could injure a business in the marketplace by providing its competitors with detailed insights into the strategic plans of the business or with confidential personnel information, thereby diminishing the advantage that the business maintains over those that do not possess such information. Without these exemptions, private-sector businesses, whose records generally are not required to be open to the public, might refrain from participating in economic-development programs or tax-credit or tax-refund programs and thus would not be able to use the incentives available under the programs. If a business were unable to use the incentives, the business might choose to locate its business and other investment activities outside the state, which would deprive the state and the public of the potential economic benefits associated with such business activities in this state. The harm to businesses in the marketplace and to the effective administration of economic-development and incentive programs caused by the public disclosure of such information far outweighs the public benefits derived from the release of the information.

Section 3. Section 288.1067, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 2007.

288.075 Confidentiality of records.—

(1) As used in this section, the term “economic development agency” means:

- (a) The Office of Tourism, Trade, and Economic Development;
- (b) Any industrial development authority created in accordance with part III of chapter 159 or by special law;
- (c) Space Florida created in part II of chapter 331;
- (d) The public economic development agency of a county or municipality;
- (e) Any research and development authority created in accordance with part V of chapter 159; or
- (f) Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

(2) Upon written request from a private corporation, partnership, or person, information held by an economic development agency concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first.

(3) An economic development agency may extend the period of confidentiality specified in subsection (2) for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. Such a request for an extension in the period of confidentiality must be received prior to the expiration of any confidentiality originally provided under this section.

(4) Trade secrets, as defined by s. 812.081, contained in the records of an economic development agency relating to the plans, intentions, or interests of a corporation, partnership, or person who has requested confidentiality pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the date an economic development agency receives a request for confidentiality or until otherwise disclosed, whichever occurs first.

(5) A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information pursuant to this section until 90 days after the information is made public unless:

(a) The public officer or employee is acting in an official capacity;

(b) The agreement does not accrue to the personal benefit of such public officer or employee; and

(c) In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.

(6) Any person who is an employee of an economic development agency who violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 77-75; s. 1, ch. 79-395; s. 3, ch. 83-47; s. 1, ch. 86-152; s. 1, ch. 86-180; s. 1, ch. 86-218; s. 1, ch. 89-217; s. 104, ch. 90-360; s. 245, ch. 91-224; s. 220, ch. 95-148; s. 1, ch. 95-378; s. 1, ch. 96-353; s. 135, ch. 96-406; s. 14, ch. 99-256; s. 1, ch. 2001-161; s. 5, ch. 2002-183; s. 27, ch. 2003-286; s. 55, ch. 2006-60; s. 1, ch. 2006-157.

288.1067 Confidentiality of records.—

(1) The following information held by the Office of Tourism, Trade, and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities, and their employees or agents, pursuant to the incentive programs for qualified businesses as provided in s. 220.191, s. 288.1045, s. 288.106, s. 288.108, s. 288.1088, or s. 288.1089 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, for a period not to exceed the duration of the relevant tax refund, tax credit, or incentive agreement:

(a) The business's federal employer identification number, unemployment compensation account number, and Florida sales tax registration number.

(b) Any trade secret information as defined in s. 812.081. Notwithstanding any provision of this section, trade secret information shall continue to be confidential and exempt after the duration of the tax refund, tax credit, or incentive agreement.

(c) The percentage of the business's sales occurring outside this state and, for businesses applying under s. 288.1045, the percentage of the business's gross receipts derived from Department of Defense contracts during the 5 years immediately preceding the date the business's application is submitted.

(d) The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.

(e) The average wage actually paid by the business for those jobs created by the project and any detailed proprietary business information or an employee's personal identifying information, held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.

(f) Any proprietary business information regarding capital investment in eligible building and equipment made by the qualified business project when held by the Office of Tourism, Trade, and Economic Development as evidence of the achievement or nonachievement of the investment requirements for the tax credit certification under s. 220.191, for the high-impact performance agreement under s. 288.108, for the Quick Action Closing Fund agreement under s. 288.1088, or for the Innovation Incentive Program agreement under s. 288.1089.

(g) The amount of:

1. Taxes on sales, use, and other transactions paid pursuant to chapter 212;
2. Corporate income taxes paid pursuant to chapter 220;
3. Intangible personal property taxes paid pursuant to chapter 199;

4. Emergency excise taxes paid pursuant to chapter 221;
5. Insurance premium taxes paid pursuant to chapter 624;
6. Excise taxes paid on documents pursuant to chapter 201; or
7. Ad valorem taxes paid, as defined in s. 220.03(1),

which the qualified business reports on its application for certification or reports during the term of the tax refund agreement, and for which the qualified business claims a tax refund under s. 288.1045 or s. 288.106, and any such information held as evidence of the achievement or nonachievement of performance items contained in the tax refund agreement.

(2) Nothing contained in this section shall prevent the Office of Tourism, Trade, and Economic Development or Enterprise Florida, Inc., from releasing:

(a) The names of qualified businesses, the total number of jobs each business expects to create, the total number of jobs created by each business, and the amount of tax refunds awarded to and claimed by each business under s. 288.1045 or s. 288.106. However, for a business applying under s. 288.1045 based on obtaining a new Department of Defense contract, the total number of jobs expected and the amount of tax refunds claimed shall not be released until the new Department of Defense contract is awarded;

(b) The amount of incentives awarded and claimed by each business under s. 288.108 or s. 288.1088; or

(c) The names of qualified businesses, the total number of jobs each business expects to create, and the total number of jobs created by each business under s. 220.191.

(3) Nothing contained in this section shall prevent the Office of Tourism, Trade, and Economic Development or Enterprise Florida, Inc., from publishing statistics in the aggregate and so classified as to prevent the identification of a single qualified applicant.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 2002-68; s. 22, ch. 2003-1; s. 1, ch. 2006-59.

PCB GEAC 07-03 Summary

Background

The Institute of Food and Agricultural Sciences ("IFAS") is a federal-state-county partnership at the University of Florida. It was created in 1964 and is dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible. In 1984, the Legislature created a supplemental pension plan for designated employees of IFAS.

IFAS operates a supplemental pension plan separate from the Florida Retirement System ("FRS") for designated cooperative extension employees who are retired from the federal civil service. The Legislature enacted this plan to provide a supplement to the monthly retirement benefits being paid under the federal Civil Service Retirement System to certain retired employees of IFAS whose positions were ineligible for coverage under a state-supported retirement system.

IFAS participants were required to satisfy six specific criteria, which made the IFAS supplemental plan a "closed" system. This created a fixed census of participants in the plan that prevented new participants from replacing retiring participants. Unfortunately, as the active membership declined, so did employer payroll contributions, thus creating a greater draw on benefits by retirees than could be replaced by investment earnings or contributions from new participants. The FRS, for example, has three active employees for each retiree, whereas the IFAS plan is "upside down" with only 190 members: 81 active employees and 109 retirees.

The amount of the IFAS pension benefit is the difference between the amount earned by the employee under the federal Civil Service Retirement System and the amount the employee would have received under the FRS and the primary insurance under Social Security at age 62. It is funded from two sources: a monthly contribution by IFAS of a specified percentage of an employee's gross monthly salary and returns on investments. Yet, since 2002, these sources have been insufficient to fund the required supplemental benefits.

From July 1, 2003 to July 1, 2005, the employer contribution rate was set at 13.83 percent – almost double the previous amounts of 6.96 percent and 7.17 percent. Based on the actuarial valuation of the IFAS supplemental pension plan, the employer contribution rate was set at 20.23 percent for the period of July 1, 2005 through June 30, 2006. The Legislature, however, appropriated \$500,000 from the General Revenue Fund to fund the increased employer contribution for the plan.

This budget action is merely a temporary fix to a situation that will inevitably worsen as more active participants retire and the annuitant pool grows. Without additional funding

from the Legislature, the employer contribution rate would increase dramatically to 28.23 percent of gross employee compensation.

Possible remedies for the IFAS funding issue include:

- The status quo with significantly higher biennial increases to the contribution rate;
- A capped rate with supplemental annual appropriations from the Legislature; or
- Merger of the IFAS plan with FRS (recommended option).

Proposal

This proposal merges the IFAS plan with the FRS, which is the only alternative that will permanently address the IFAS funding imbalance. It consolidates into the FRS the supplemental pension plan; thus, requiring the transfer of assets and the assumption of liabilities and obligations. Furthermore, the proposal reduces the contribution rate for participants of the IFAS plan from 20.23 percent to 18.75 percent, which is designed to fund the program in a way that is cost-neutral to the Florida Retirement System. Implementation will no longer necessitate the annual appropriation of at least \$500,000 to subsidize the insufficient payroll revenues flowing into the IFAS plan.

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

1 A bill to be entitled
2 An act relating to the Florida Retirement System; creating
3 s. 121.047, F.S.; consolidating the operation of the
4 Institute of Food and Agricultural Sciences Supplemental
5 Retirement Program under the Florida Retirement System;
6 providing for assumption of program liabilities and
7 obligations; abolishing the Institute of Food and
8 Agricultural Sciences Supplemental Retirement Trust Fund;
9 barring program participants from membership in the
10 Florida Retirement System; amending s. 121.40, F.S.,
11 relating to the establishment and administration of the
12 Institute of Food and Agricultural Sciences Supplemental
13 Retirement Program; conforming provisions to changes made
14 by the act; redefining the term "trust fund" for purposes
15 of administering the program; providing a rate of monthly
16 contributions; removing provisions relating to investments
17 of the program trust fund; providing a legislative finding
18 that the act fulfills an important state interest;
19 providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Section 121.047, Florida Statutes, is created to
24 read:

25 121.047 Consolidation of liabilities and assets; Institute
26 of Food and Agricultural Sciences Supplemental Retirement
27 Program; restriction.--

28 (1) Effective July 1, 2007, the Institute of Food and
29 Agricultural Sciences Supplemental Retirement Program, as

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

established under s. 121.40, shall be consolidated under the
Florida Retirement System and the system shall assume:

(a) All liabilities related to the payment of supplemental
monthly benefits to retired employees of the institute and their
surviving beneficiaries; and

(b) All obligations in regard to funding and administering
benefits accrued for the benefit of retired employees of the
institute and their surviving beneficiaries.

(2) The administrator shall, as of July 1, 2007, cause to
be transferred to the trust fund of the Florida Retirement System
all assets of the Institute of Food and Agricultural Sciences
Supplemental Retirement Trust Fund, including moneys, securities,
and other property accumulated to date, as well as all
liabilities and obligations connected therewith. Upon such
transfer of assets, liabilities, and obligations, the Institute
of Food and Agricultural Sciences Supplemental Retirement Trust
Fund shall be abolished and the administrator shall become the
trustee of any funds transferred to the Florida Retirement
System.

(3) Participation in the Institute of Food and Agricultural
Sciences Supplemental Retirement Program does not constitute
membership in the Florida Retirement System.

Section 2. Section 121.40, Florida Statutes, is amended to
 read:

121.40 Cooperative extension personnel at the Institute of
 Food and Agricultural Sciences; supplemental retirement
 benefits.--

(1) SHORT TITLE.--This section shall be known and may be
 cited as the "Institute of Food and Agricultural Sciences

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

Supplemental Retirement Act."

(2) PURPOSE.--The purpose of this act is to provide a supplement to the monthly retirement benefits being paid under the federal Civil Service Retirement System to, or with respect to, certain retired employees of the Institute of Food and Agricultural Sciences at the University of Florida, whose positions were ineligible for coverage under a state-supported retirement system.

(3) DEFINITIONS.--The definitions provided in s. 121.021 shall not apply to this program section except when specifically cited. For the purposes of this section, the following words or phrases have the respective meanings set forth:

(a) "Institute" means the Institute of Food and Agricultural Sciences of the University of Florida.

(b) "Department" means the Department of Management Services.

(c) "Participant" means any employee of the institute who is eligible to receive a supplemental benefit under this program as provided in subsection (4).

(d) "Trust fund" means the Florida Retirement System ~~Institute of Food and Agricultural Sciences Supplemental Retirement~~ Trust Fund.

(e) "Creditable service" means any service subsequent to December 1, 1970, with the institute as a cooperative extension employee holding both state and federal appointments, that is credited for retirement purposes by the institute toward a federal Civil Service Retirement System annuity.

(4) ELIGIBILITY FOR SUPPLEMENT.--To be eligible for a benefit under this program pursuant to the provisions of this

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

section, a person must meet all of the following eligibility criteria:

(a) The person must have held both state and federal appointments while employed at the institute, and have completed 10 years of creditable service with the institute, subsequent to December 1, 1970.

(b) The person must be participating in the federal Civil Service Retirement System based on service at the institute.

(c) The person must have retired from the institute on or after January 1, 1985, and must have been eligible for benefits under the federal Civil Service Retirement System commencing immediately upon the termination of service with the institute.

(d) The person must have attained the age of 62.

(e) The person must not be entitled to any benefit from a state-supported retirement system or from social security based upon service as a cooperative extension employee of the institute. Participation in the Institute of Food and Agricultural Sciences Supplemental Retirement Program shall not constitute membership in the Florida Retirement System.

(f) The person must have been employed with the institute prior to, and on, July 1, 1983.

(5) SUPPLEMENT AMOUNT.--The supplemental payment shall provide a benefit to the retiree equal to the amount by which the retirement annuity, without a survivor benefit, earned by the employee under the federal Civil Service Retirement System with respect to service as a cooperative extension employee of the institute after December 1, 1970, is inferior to:

(a) An amount equal to the option one retirement benefit that the employee would have been entitled to receive at his or

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

her normal retirement age under the Florida Retirement System, attributable only to creditable service after December 1, 1970, as a cooperative extension employee of the institute, excluding any past or prior service credit, had such employee been a member of the Florida Retirement System; plus

(b) An amount equal to the primary insurance amount that the individual employee would have been entitled to receive under social security at age 62 had he or she been covered for such employment, such amount to be computed in accordance with the Social Security Act only with respect to employment as a cooperative extension employee of the institute after December 1, 1970.

(6) PAYMENT OF SUPPLEMENT.--Any participant who retires on or after January 1, 1985, from the federal Civil Service Retirement System as a cooperative extension employee of the institute at the University of Florida and who satisfies all of the eligibility criteria specified in subsection (4) shall be entitled to receive a supplemental benefit under this program computed in accordance with subsection (5), to begin July 1, 1985, or the month of retirement, or the month in which the participant becomes age 62, whichever is later. Upon application to the administrator, the participant shall receive a monthly supplemental benefit which shall commence on the last day of the month of retirement and shall be payable on the last day of the month thereafter during his or her lifetime. A participant may have federal income tax and health insurance premiums deducted from his or her monthly supplemental benefit in the same manner as provided in s. 121.091(14)(a) and (b) for monthly retirement benefits under the Florida Retirement System.

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

146 (7) OPTIONAL FORMS OF SUPPLEMENTAL RETIREMENT BENEFITS.--
147 Prior to the receipt of the first monthly supplemental retirement
148 payment under this program, a participant shall elect to receive
149 the supplemental retirement benefits to which he or she is
150 entitled under subsection (6) in accordance with s. 121.091(6).

151 (8) DEATH BENEFITS.--

152 (a) If the employment of a participant of this program is
153 terminated by reason of his or her death subsequent to the
154 completion of 10 years of creditable service with the institute
155 but prior to his or her actual retirement, such 10-year period
156 having commenced on or after December 1, 1970, it shall be
157 assumed that the participant had met all of the eligibility
158 requirements under this section and had retired from the federal
159 Civil Service Retirement System and under this section as of the
160 date of death, having elected, in accordance with subsection (7),
161 the optional form of supplemental payment most favorable to his
162 or her beneficiary, as determined by the administrator. The
163 monthly supplemental benefit provided in this paragraph shall be
164 paid to the participant's beneficiary (spouse or other financial
165 dependent) upon such beneficiary's attaining the age of 62 and
166 shall be paid thereafter for the beneficiary's lifetime.

167 (b) If a participant of this program dies subsequent to his
168 or her actual retirement under the federal Civil Service
169 Retirement System but prior to attaining age 62, and such
170 participant was otherwise eligible for supplemental benefits
171 under this section, it shall be assumed that the participant had
172 met all of the eligibility requirements under this section and
173 had retired as of the date of death, having elected, in
174 accordance with subsection (7), the optional form of supplemental

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

175 payment most favorable to his or her beneficiary, as determined
176 by the administrator. The monthly supplemental benefit provided
177 in this paragraph shall be paid to the participant's beneficiary
178 (spouse or other financial dependent) upon such beneficiary's
179 attaining the age of 62 and shall be paid thereafter for the
180 beneficiary's lifetime.

181 (9) DESIGNATION OF BENEFICIARIES.--Each participant of this
182 program may designate beneficiaries in accordance with s.
183 121.091(8).

184 (10) COST-OF-LIVING ADJUSTMENT OF SUPPLEMENTAL BENEFITS.--
185 On each July 1, the supplemental benefit of each retired
186 participant of this program and each annuitant thereof shall be
187 adjusted as provided in s. 121.101.

188 (11) EMPLOYMENT AFTER RETIREMENT: LIMITATION.--Any person
189 who is receiving a supplemental retirement benefit under this
190 program ~~section~~ may be reemployed by any private or public
191 employer after retirement and receive supplemental retirement
192 benefits pursuant to this section and compensation from his or
193 her employer, without any limitations. However, if a retired
194 participant who is receiving a supplemental retirement benefit
195 under this section is reemployed at the institute in a position
196 as a cooperative extension employee of the institute, he or she
197 shall forfeit all rights to supplemental retirement benefits in
198 accordance with the eligibility provisions of paragraph (4)(e).

199 (12) CONTRIBUTIONS.--

200 (a) For the purpose ~~purposes~~ of funding the supplemental
201 benefits provided by this section, the institute is authorized
202 and required to pay, commencing July 1, 1985, the necessary
203 monthly contributions from its appropriated budget. These amounts

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

shall be paid into the Florida Retirement System ~~Institute of~~
~~Food and Agricultural Sciences Supplemental Retirement~~ Trust
Fund, ~~which is hereby created.~~

(b) The monthly contributions required to be paid pursuant
to paragraph (a) on the gross monthly salaries, from all sources
with respect to such employment, paid to those employees of the
institute who hold both state and federal appointments and who
participate in the federal Civil Service Retirement System shall
be as follows:

Dates of Contribution	Percentage
-----------------------	------------

Rate Changes	Due
--------------	-----

July 1, 1985, through December 31, 1988	6.68%
---	-------

January 1, 1989, through December 31, 1993	6.35%
--	-------

January 1, 1994, through December 31, 1994	6.69%
--	-------

January 1, 1995, through June 30, 1996	6.82%
--	-------

July 1, 1996, through June 30, 1998	5.64%
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DRAFT - PCB GEAC 07-03

ORIGINAL

2007

July 1, 1998, through June 30, 7.17%
2001

July 1, 2001, through June 30, 6.96%
2003

July 1, 2003, through June 30, 13.83%
2005

~~Effective~~ July 1, 2005, through 20.23%
June 30, 2007

Effective July 1, 2007 18.75%

~~(13) INVESTMENT OF THE TRUST FUND.--~~

~~(a) The State Board of Administration shall invest and
reinvest available funds of the trust fund in accordance with the
provisions of ss. 215.44-215.53. The board shall consider
investment techniques, such as contingent immunization or the
development of a dedicated portfolio, which are directed toward
developing minimum-risk procedures for supporting a prescribed
liability schedule.~~

~~(b) Costs incurred in carrying out the provisions of this
section shall be deducted from the interest earnings accruing to
the trust fund.~~

~~(13)~~ (14) ADMINISTRATION OF PROGRAM SYSTEM.--

(a) The department shall make such rules as are necessary
for the effective and efficient administration of this program

DRAFT - PCB GEAC 07-03

ORIGINAL

2007

240 ~~system.~~ The secretary of the department shall be the
241 administrator of the program ~~system~~. The funds to pay the
242 expenses for such administration shall be appropriated from the
243 interest earned on investments made for the Florida Retirement
244 System Trust Fund.

245 (b) The department may ~~is authorized to~~ require oaths, by
246 affidavit or otherwise, and acknowledgments from persons in
247 connection with the administration of its duties and
248 responsibilities under this section.

249 ~~(c) The administrator shall cause an actuarial study of the~~
250 ~~system to be made at least once every 2 years and shall report~~
251 ~~the results of such study to the next session of the Legislature~~
252 ~~following completion of the study.~~

253 Section 3. The Legislature finds that a proper and
254 legitimate state purpose is served when employees and retirees of
255 the state and of its political subdivisions, and the dependents,
256 survivors, and beneficiaries of such employees and retirees, are
257 extended the basic protections afforded by governmental
258 retirement systems that provide fair and adequate benefits that
259 are managed, administered, and funded in an actuarially sound
260 manner, as required by Section 14, Article X of the State
261 Constitution and part VII of chapter 112 of the Florida Statutes.
262 Therefore, the Legislature determines and declares that this act
263 fulfills an important state interest.

264 Section 4. This act shall take effect July 1, 2007.

OPEN GOVERNMENT SUNSET REVIEW ACT

119.15 Legislative review of exemptions from public meeting and public records requirements.—

(1) This section may be cited as the “Open Government Sunset Review Act.”

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011. This act does not apply to an exemption that:

(a) Is required by federal law; or

(b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;

2. Exempt from s. 119.07(1) or s. 286.011; and

3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)(a) By June 1 in the year before the repeal of an exemption under this section, the Division of Statutory Revision of the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

(b) Any exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and

repeal under this section. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(6)(a) As part of the review process, the Legislature shall consider the following:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

(b) An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(7) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to

persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

History.—s. 2, ch. 95-217; s. 25, ch. 98-136; s. 37, ch. 2005-251; s. 15, ch. 2006-1.

PCB GEAC 07-06 Summary

Requests Made by Law Enforcement Agencies

Current law provides a public records exemption for:

- A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency;
- The custodial agency's response to that public records request; and
- Any information that would identify the public record that was requested by the law enforcement agency or provided by the custodial agency.

The exemption applies for the period of time that the information is considered active criminal intelligence or criminal investigative information. Once the investigation is no longer active, the law enforcement agency must give notice to the custodial agency that the information is no longer protected and is available for public inspection and copying.

Release of this information prior to conclusion of an investigation could jeopardize that investigation.

2006 – 2007 Interim Review

During the 2006 – 2007 Interim, committee staff reviewed the exemption pursuant to the Open Government Sunset Review Act. Staff surveyed law enforcement agencies and custodial agencies to determine whether the exemption was utilized and if changes to the exemption were needed.

As part of the review, staff discovered that the exemption as currently worded has created some confusion; thus, it was recommended that the exemption be clarified.

Proposal

This proposal clarifies that the exemption does not apply to the public record that is the subject of the public records request. The exemption only applies to the request, the custodial agency's response to that request, and any information that would identify whether a request had been made or received.

DRAFT - PCB GEAC 07-06

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding public records requests made
by law enforcement agencies; amending s. 119.071, F.S.;
making clarifying changes; reorganizing the exemption;
deleting the provision that provides for repeal of the
exemption under the Open Government Sunset Review Act;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.--

(2) AGENCY INVESTIGATIONS.--

(c)1. Active criminal intelligence information and active
criminal investigative information are exempt from s. 119.07(1)
and s. 24(a), Art. I of the State Constitution.

2.a. A request made by ~~of~~ a law enforcement agency to
inspect or copy a public record that is in the custody of another
agency and, ~~the~~ custodian's response to the request, and any
information that would identify whether a law enforcement agency
has requested or received that ~~the public record that was~~
~~requested by the law enforcement agency or provided by the~~
~~eustodian~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of
the State Constitution, during the period in which the
information constitutes active criminal intelligence information
or active criminal investigative information ~~that is active. This~~

DRAFT - PCB GEAC 07-06

ORIGINAL

YEAR

~~exemption is remedial in nature, and it is the intent of the
Legislature that the exemption be applied to requests for
information received before, on, or after the effective date of
this subparagraph.~~

b. The law enforcement agency that made the request to
inspect or copy a public record shall give notice to the
custodial agency when the criminal intelligence information or
criminal investigative information is no longer active, so that
the request made by the law enforcement agency, the custodian's
response to the request, and information that would identify
whether the law enforcement agency had or requested or received
that the public record requested are available to the public.

c. This exemption is remedial in nature, and it is the
intent of the Legislature that the exemption be applied to
requests to inspect or copy public records received by the
custodial agency before, on, or after the effective date of this
subparagraph. This subparagraph is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand
repealed October 2, 2007, unless reviewed and saved from repeal
through reenactment by the Legislature.

Section 2. This act shall take effect October 1, 2007.

PCB GEAC 07-11 Summary

Public Employee Optional Retirement Program

The Florida Retirement System (FRS) was created in 1970 as the successor entity to two separate state and local government pension plans. The Department of Management Services (DMS) administers benefit payments while the State Board of Administration (SBA) is the investment manager.

Since 2001, newly-hired and existing employees have been permitted to choose between the defined benefit plan and a defined contribution alternative, called the "Public Employee Optional Retirement Program" (PEORP). The PEORP is an optional defined contribution retirement plan in which employer contributions, based on membership class, are made to an account established for the participant. The participant can then choose, from a number of investment funds which "span the risk-return spectrum," how to invest those contributions. Benefits are provided through employee directed investments in accordance with s. 401(a) of the Internal Revenue Code. Further, benefits accrue in individual accounts that are participant-directed, portable, and funded by employer contributions and earnings thereon.

Public Records Exemption for the PEORP

Current law provides that all personal identifying information regarding a participant in PEORP contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt from public records requirements. The department or board may use the exempt information in any legal or administrative proceeding. In addition, access is available to information regarding the providers and products that are selected by program participants and the amount of money invested in those products.

The statement of public necessity for the exemption establishes more than one goal or public purpose for the exemption. First, release of personal identifying information would allow investment providers who are not approved PEORP providers to contact program participants in order to offer unapproved investment products. The Legislature found that the offering of unapproved investment products would be very confusing to program participants because there are a number of approved product choices to make already. Further, the Legislature found that permitting transparency regarding the identity of PEORP participants would permit competing approved providers to identify and contact participants for solicitation.

Additionally, the Legislature found that the exemption protects sensitive personal information of PEORP participants. If identifying information were released, anyone could find out how much money a participant had with an investment provider and in a particular investment product. Investment totals owned by an individual normally would be considered private information and could not be readily obtained by alternative means.

Proposal

The proposal recommends retention of the public records exemption for personal identifying information of PEORP participants.

DRAFT - PCB GEAC 07-11

ORIGINAL

2007

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act regarding the Public Employee Optional Retirement Program; amending s. 121.4501, F.S.; removing unnecessary provisions; deleting the provision that provides for repeal of the exemption under the Open Government Sunset Review Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (19) of section 121.4501, Florida Statutes, is amended to read:

121.4501 Public Employee Optional Retirement Program.--

(19) PARTICIPANT RECORDS.--~~All~~ Personal identifying information of ~~regarding~~ a participant in the Public Employee Optional Retirement Program contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services, ~~or their agents, employees, or contractors~~ is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~The department or board may use such exempt information as necessary in any legal or administrative proceeding. This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2007.

PCB GEAC 07-12 Summary

Telecommunication Audits

Prior to 2000, municipalities assessed taxes on telecommunications companies pursuant to the Public Service Tax statute. To ensure proper payment of the tax, the statute authorized municipalities to audit relevant company records. In addition, the statute contained a public records exemption for any proprietary confidential business information received during the course of the audit.

In 2000, the Communication Service Tax (CST) was created and the Public Service Tax on telecommunications was subsumed into the CST. When this shift in statutory authority occurred, all of the Public Service Tax audits had not been conducted. These audits were conducted after the tax payments were received. Therefore, audits to ensure that accurate taxes had been paid in the years immediately prior to 2000 had not been conducted.

In order to transition from one tax to the other, temporary audit authority was granted and a public records exemption was created. The transition period has ended. As such, representatives of municipalities and telecommunication service providers have confirmed that the audit authority and public records exemption are no longer necessary.

Proposal

This proposal repeals the temporary audit authority and the accompanying public records exemption.

DRAFT - PCB GEAC 07-12

ORIGINAL

2007

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding telecommunication audits;
repealing s. 36, ch. 2001-140, Laws of Florida, relating
to the authority of a local government to conduct audits
for the purpose of ensuring compliance with respect to the
public service tax; repealing s. 166.236, F.S., relating
to a public records exemption for information received by
a taxing authority in connection with such an audit;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 36 of chapter 2001-140, Laws of Florida,
is repealed.

Section 2. Section 166.236, Florida Statutes, is repealed.

Section 3. This act shall take effect October 1, 2007.

CHAPTER 2001-140
Committee Substitute for
Committee Substitute for Senate Bill No. 1878

An act relating to tax on communications services; creating s. 202.105, F.S.; providing legislative findings and intent with respect to the Communications Services Tax Simplification Law; amending s. 202.11, F.S.; revising and providing definitions; amending s. 202.12, F.S.; specifying the rates for the state tax; revising provisions relating to application of the tax; providing for application of the tax rate to private communications services and mobile communications services; providing the initial method for determining the sales price of private communications services and a revised method effective January 1, 2004; relieving service providers of certain liability; revising provisions relating to direct-pay permits; creating s. 202.155, F.S.; providing special rules for mobile communications services; providing duties of home service providers and the Department of Revenue in determining a customer's place of primary use and determining the correct taxing jurisdiction; relieving service providers of certain liability; providing requirements with respect to identifying and separately stating the sales price of mobile communications services not subject to the taxes administered under ch. 202, F.S.; amending s. 202.16, F.S.; revising provisions relating to responsibility for payment of taxes and tax amounts and brackets; amending s. 202.17, F.S.; specifying that registration as a dealer of communications services does not constitute registration for purposes of placing and maintaining communications facilities in municipal or county rights-of-way; removing the registration fee for such dealers; revising provisions relating to resale certificates; amending s. 202.18, F.S.; revising provisions relating to distribution of a portion of the proceeds of the tax on direct-to-home satellite service and to distribution of local communications services taxes and adjustment of such distribution; amending s. 202.19, F.S.; revising provisions which authorize imposition of local communications services taxes and provide for use of revenues and certain credits; specifying the maximum rates of such taxes; providing the initial method for determining the sales price of private communications services for local communications services taxes and for the discretionary sales surtax under s. 212.055, F.S., that is imposed as a local communications services tax, and providing a revised method effective January 1, 2004; relieving service providers of certain liabilities; revising requirements relating to the direct-pay permit required to qualify for the limitation on local communications services taxes on interstate communications services; providing for application of local communications services taxes to mobile communications services; amending s. 202.20, F.S.; specifying the local communications services tax conversion rates; revising requirements with respect to adjustment by a local government of its tax rate when tax revenues are less than

received from replaced revenue sources; requiring adjustment of the tax rate if revenues received for a specified period exceed a specified threshold; authorizing local governments to increase the tax rate established by the Revenue Estimating Conference and approved by the Legislature to the maximum tax rate so established and approved; amending s. 202.21, F.S.; conforming provisions; amending s. 202.22, F.S., relating to determination of local tax situs for a local communications services tax; revising requirements relating to use of enhanced zip codes; revising requirements relating to certification or recertification of a database by the department; specifying effect when certain applications for certification are not approved or denied within the required time period; revising provisions relating to a dealer's duty to update a database and to the amount of dealer's credit allowed when an alternative method of assigning service addresses is used; amending s. 202.23, F.S.; providing requirements for refunds when excess communications services tax has been paid; creating s. 202.231, F.S.; providing requirements for provision of information by the department to local taxing jurisdictions; amending s. 202.24, F.S., relating to limitations on local taxes and fees imposed on dealers of communications services; deleting provisions relating to legislative review; repealing s. 202.26(3)(i), F.S., which provides for adoption of rules by the department with respect to collection of information no longer required; amending s. 202.27, F.S.; deleting provisions which allow certain dealers making sales in more than one location to file a single return; amending s. 202.28, F.S.; including persons collecting the gross receipts tax in provisions relating to the dealer's credit; amending s. 202.37, F.S.; providing requirements for audits conducted with respect to local communications services taxes; providing that certain persons or entities may provide evidence to the department regarding failure to report taxable sales and providing authority of the department with respect thereto; creating s. 202.38, F.S.; providing for credits or refunds under ch. 202, F.S., for certain bad debts or adjustments with respect to taxes under ch. 212, F.S., or ch. 166, F.S., billed prior to October 1, 2001, and no longer subject to tax; creating s. 202.381, F.S.; providing requirements with respect to implementation of ch. 202, F.S., and ch. 2000-260, Laws of Florida, and transition from the previous tax structure; amending s. 203.01, F.S.; specifying the rate of the gross receipts tax on communications services; amending s. 212.031, F.S.; conforming provisions; amending s. 212.054, F.S.; clarifying that a discretionary sales surtax applies to transactions taxed under ch. 202, F.S.; amending s. 212.20, F.S.; removing provisions relating to deposit of certain proceeds under ch. 212, F.S., in the Mail Order Sales Tax Clearing Trust Fund; amending ss. 11.45, 218.65, and 288.1169, F.S.; correcting references; amending s. 212.202, F.S.; renaming the Mail Order Sales Tax Clearing Trust Fund as the Communications Services Tax Clearing Trust Fund; amending s. 337.401, F.S.; revising dates for notice of election by municipalities and counties regarding imposition of permit fees

to the department; providing that a municipality or county that elects not to impose permit fees on communications services providers may increase its local tax rate by resolution; requiring notice to the department; prescribing regulations governing the amounts that may be imposed by municipalities and counties against certain persons or entities in connection with the placement or maintenance of communications facilities in municipal or county roads or rights-of-way; repealing s. 337.401(3)(f) and (g), F.S., relating to the authority of municipalities and counties to request in-kind requirements from cable service providers and to negotiate cable service franchises, and revising and relocating such provisions under that section; providing relationship of provisions relating to regulation of placement or maintenance of communications facilities in public roads or rights-of-way by counties or municipalities to zoning or land use authority; providing status of registration under such provisions; authorizing municipalities and counties to change their election regarding imposition of permit fees and providing for adjustment of tax rates; providing notice requirements; revising definitions; specifying continued application of s. 166.234, F.S., relating to administration and rights and remedies, to municipal public service taxes on telecommunications services imposed prior to October 1, 2001; providing for payment of franchise fees by cable or telecommunications service providers with respect to services provided prior to October 1, 2001; providing for severability; repealing s. 52 of ch. 2000-260, Laws of Florida, which provides for a legislative study during the 2001 session; repealing s. 58(1) of ch. 2000-260, Laws of Florida, which provides for the June 30, 2001, repeal of those administrative sections of ch. 202, F.S., which have taken effect; repealing s. 58(2) of ch. 2000-260, Laws of Florida, which provides for the June 30, 2001, repeal of the following provisions prior to their October 1, 2001, effective date: the remainder of ch. 202, F.S., which provides for the taxation of the sale of communications services; other statutory amendments which provide related administrative provisions; provisions which remove levy of the municipal public service tax on telecommunication services; provisions which provide for a gross receipts tax on communications services to be applied pursuant to ch. 202, F.S.; provisions which remove the imposition of tax under ch. 212, F.S., on telecommunication service; provisions relating to the authority of counties and municipalities to regulate the placement of telecommunications facilities in roads and rights-of-way and to impose permit fees and franchise fees; and provisions relating to the application of amendments made by ch. 2000-260, Laws of Florida; repealing s. 59 of ch. 2000-260, Laws of Florida, which, effective June 30, 2001, amends s. 337.401, F.S., relating to the authority of counties and municipalities to regulate the placement of telecommunications facilities in roads and rights-of-way and to impose permit fees and franchise fees, to remove amendments made by ch. 2000-260, Laws of Florida, which took effect January 1, 2001; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 36. Notwithstanding any provision of law to the contrary, the provisions of section 166.234, Florida Statutes, shall continue to apply with respect to all public service taxes imposed on telecommunications services under section 166.231(9), Florida Statutes, prior to its amendment by chapter 2000-260, Laws of Florida.

Section 39. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2001.

Approved by the Governor June 1, 2001.

Filed in Office Secretary of State June 1, 2001.

166.236 Audits by taxing authorities; confidential information.—

(1) If an audit of a telecommunications service provider is conducted under s. 36 of chapter 2001-140, Laws of Florida, and s. 166.234, any information received by the taxing authority or its agent in connection with the audit is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) Subsection (1) is remedial in nature and applies to all audits conducted under s. 36 of chapter 2001-140, Laws of Florida, and s. 166.234, regardless of whether the audit was begun before or after the effective date of this act.

History.—ss. 1, 2, ch. 2002-47.

PCB GEAC 07-13 Summary

Abandoned Newborn Program

In 2000, in response to a growing concern about the number of newborns who were discovered abandoned in dumpsters and other unsafe locations, the Florida Legislature joined a substantial number of other states in passing legislation designed to provide a safe alternative. Florida law provides the framework for a parent to leave a newborn infant, approximately three days old or younger, at a hospital, emergency medical services station, or fire station under certain circumstances without fear of civil or criminal investigation and prosecution. Additionally, unless there is actual or suspected child abuse or neglect, any parent who leaves a newborn infant with a firefighter, emergency medical technician, or paramedic at a fire station or who brings a newborn infant to an emergency room of a hospital "has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed...."

Public Records Exemption for the Program

Current law provides that the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station is confidential and exempt from public records requirements. The identity of the parent leaving a child, however, must be disclosed to a person claiming to be a parent of the abandoned newborn infant.

Proposal

The proposal recommends retention of the public records exemption for the abandoned newborn program.

DRAFT - PCB GEAC 07-13

ORIGINAL

2007

1 A bill to be entitled

2 An act relating to a review under the Open Government
3 Sunset Review Act regarding abandoned newborns; amending
4 s. 383.51, F.S.; making editorial changes; deleting the
5 provision that provides for repeal of the exemption under
6 the Open Government Sunset Review Act; providing an
7 effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 383.51, Florida Statutes, is amended to
12 read:

13 383.51 Confidentiality; identification of parent leaving
14 newborn infant at hospital, emergency medical services station,
15 or fire station.--The identity of a parent who leaves a newborn
16 infant at a hospital, emergency medical services station, or fire
17 station in accordance with s. 383.50 is confidential and exempt
18 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the
19 State Constitution. The identity of a parent leaving a child
20 shall be disclosed to a person claiming to be a parent of the
21 newborn infant. ~~This section is subject to the Open Government~~
22 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and shall~~
23 ~~stand repealed on October 2, 2007, unless reviewed and saved from~~
24 ~~repeal through reenactment by the Legislature.~~

25 Section 2. This act shall take effect October 1, 2007.

PCB GEAC 07-14 Summary

Consumer Inquiries and Complaints

Consumers may file complaints with or make inquiries to the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) concerning an insurance company or other entity regulated by DFS or OIR under the Florida Insurance Code. The Division of Consumer Services of the Department of Financial Services is primarily responsible for receiving inquiries and complaints from consumers and providing direct assistance and advocacy for consumers requesting such assistance or advocacy.

According to DFS, when the department investigates the activities of insurance companies or other regulated entities, policyholders may provide the department with personal information relating to their insurance policies that often includes financial or medical information. Consumers also may contact DFS about problems they have in obtaining insurance coverage and, as such, might submit medical or financial records. Often, a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services. In providing background information relating to the claim, the insured may provide medical records detailing the history of the claim, such as medical records revealing health information supporting why the claim should be paid.

Exemption under Review

Current law provides a public records exemption for certain personal or financial information held by DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated by the department or OIR. Confidential and exempt information includes bank account numbers and debit, charge, and credit card numbers, and all other personal financial and health information of a consumer held by DFS or OIR. This exemption, however, does not include the name and address of an inquirer or complainant or the name of an insurer or other regulated entity that is the subject of the inquiry or complaint.

The law also provides exceptions to the public records exemption. Confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and may be disclosed to the National Association of Insurance Commissioners. Additionally, such confidential and exempt information may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status is maintained.

Subsequent to the enactment of the public records exemption, DFS and OIR adopted Rules 69J-128-025 and 69O-128.025, F.A.C., respectively, which define "personal financial and health information," as used in the public records exemption. "Personal financial and health information," is defined to mean information, which if disclosed would reveal:

- Any individual's personal health condition, disease, or injury;
- The existence, nature, source, or amount of any individual's personal income or expenses;
- Records of or relating to any individual's personal income or expenses;
- Records of or relating to any individual's personal financial transactions of any kind;

- The existence, identification, nature, or value of any individual's assets, liabilities, or net worth;
- A history of any individual's personal medical diagnosis or treatment;
- The existence content, or status under any individual's beneficial interest in any insurance policy or annuity contract; or
- The existence, identification, nature, or value of any individual's interest in any insurance policy, annuity contract, or trust.

The rules adopted by DFS and OIR, pursuant to their general rulemaking authority, limit the scope of records that are deemed financial and personal information, and therefore confidential and exempt from public records requirements. The statutory exemption, however, provides "...all bank account numbers, and debit, charge, credit card numbers, and all other personal financial and health information of a consumer held by the department or office...are confidential and exempt..." Although DFS and OIR have general rulemaking authority, Art. I, s. 24 of the State Constitution provides that public records exemptions may only be created by the Legislature in a general law. Further, Art. II, s. 3 of the State Constitution provides that no person belonging to one branch of government shall exercise any powers appertaining to either of the branches unless expressly provided. As such, it appears DFS and OIR do not have the authority to define, by rule, what records are within the scope of a public records exemption.

Workers' Compensation

The Division of Workers' Compensation of DFS is responsible for providing information and assistance to injured workers, employers, carriers, health care providers, and managed care arrangements. The Employee Assistance and Ombudsman Office of the Division of Workers' Compensation is charged with the responsibility of facilitating and resolving disputes between an employee and the employer or carrier. Frequently, an employee will submit personal financial and medical information to support a claim for benefits or other documentation to assist in the resolution process.

A public records exemption does not exist for financial and medical information held by the Division of Workers' Compensation. Although consumers are providing financial and medical information to the Division of Workers' Compensation, which is located in DFS, the exemption under review does not apply to such information because the workers' compensation chapter is not part of the Florida Insurance Code. Therefore, personal financial and medical information provided by consumers to the division is not exempt from public records requirements, even though this is the same type of information that is exempt if provided to DFS regarding an activity regulated under the Florida Insurance Code.

Proposal

This proposal recommends reenacting the public records exemption under review. It also recommends:

- Narrowing the current exemption by specifying what "other personal financial and health information" is confidential and exempt based on the current definition provided in rules adopted by DFS and OIR;

- Expanding the exemption to include the same personal financial and medical records relating to consumer complaints and inquiries received by the Division of Workers' Compensation since such information currently is not confidential and exempt from public records requirements; and
- Deleting the exemption for bank account numbers and debit, charge, and credit card numbers since it is duplicative of the general public records exemption provided in the Public Records Act.

DRAFT - PCB GEAC 07-14

ORIGINAL

2007

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 624.23, F.S., relating to
consumer complaints and inquiries handled by the
Department of Financial Services and the Office of
Insurance Regulation; revising the exemption from public
records requirements which is provided for personal
financial and health information of consumers; creating an
exemption from public records requirements for information
concerning employees seeking assistance from the Employee
Assistance and Ombudsman Office; providing for future
legislative review and repeal of the exemptions; providing
a statement of public necessity; providing an effective.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.23, Florida Statutes, is amended to
read:

624.23 Public records exemption.--

(1) As used in this section, the term:

(a) "Consumer" means:

1. A prospective purchaser, purchaser, or beneficiary of,
or applicant for, any product or service regulated under the
Florida Insurance Code, and a family member or dependent of a
consumer.

2. An employee seeking assistance from the Employee
Assistance and Ombudsman Office under s. 440.191.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or

DRAFT - PCB GEAC 07-14

ORIGINAL

2007

injury;

2. The existence, nature, source, or amount of a consumer's personal income or expenses;

3. Records of or relating to a consumer's personal financial transactions of any kind;

4. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

5. A history of a consumer's personal medical diagnosis or treatment;

6. The existence or content or any individual coverage or status under a consumer's beneficial interest in any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust. All bank account numbers and debit, charge, and credit card numbers, and all other

(2) Personal financial and health information of a consumer held by the department or office or their service providers or agents, relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For the purpose of this section, the term "consumer" includes but is not limited to a prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer, a subscriber under a group policy, or a policyholder. This information shall be redacted from records that contain nonexempt information prior to disclosure. This exemption applies to

DRAFT - PCB GEAC 07-14

ORIGINAL

2007

59 personal financial and health information ~~made confidential and~~
60 ~~exempt by this section~~ held by the department or office ~~or their~~
61 ~~service providers or agents~~ before, on, or after the effective
62 date of this exemption.

63 (3) Such confidential and exempt information may be
64 disclosed to:

65 (a) Another governmental entity, if disclosure is necessary
66 for the receiving entity to perform its duties and
67 responsibilities; ~~and may be disclosed to~~

68 (b) The National Association of Insurance Commissioners.
69 ~~The receiving governmental entity and the association must~~
70 ~~maintain the confidential and exempt status of such information.~~
71 ~~The information made confidential and exempt by this section may~~
72 ~~be used in a criminal, civil, or administrative proceeding so~~
73 ~~long as the confidential and exempt status of such information is~~
74 ~~maintained. This exemption does not include the name and address~~
75 ~~of an inquirer or complainant to the department or office or the~~
76 ~~name of an insurer or other regulated entity which is the subject~~
77 ~~of the inquiry or complaint.~~

78 (4) This section is subject to the Open Government Sunset
79 Review Act ~~of 1995~~ in accordance with s. 119.15 and shall stand
80 repealed on October 2, 2012 ~~2007~~, unless reviewed and saved from
81 repeal through reenactment by the Legislature.

82 Section 2. The Legislature finds that it is a public
83 necessity to protect a person's sensitive financial and health
84 information. Disclosure of financial information would create the
85 opportunity for theft or fraud thereby jeopardizing the financial
86 security of a person. Limiting disclosure of personal financial
87 information held by the Department of Financial Services or the

DRAFT - PCB GEAC 07-14

ORIGINAL

2007

88 Office of Insurance Regulation is also necessary in order to
89 protect the financial interests of the persons to whom that
90 information pertains. Such information could be used for
91 fraudulent or other illegal purposes, including identity theft,
92 and could result in substantial financial harm. Furthermore,
93 every person has an expectation of and a right to privacy in all
94 matters concerning his or her financial interests. The
95 Legislature further finds that it is a public necessity that
96 health information held by the department or office and
97 information provided by employees seeking assistance from the
98 Employee Assistance and Ombudsman Office be made confidential and
99 exempt because matters of personal health are traditionally
100 private and confidential concerns between the patient and health
101 care provider. The private and confidential nature of personal
102 health matters pervades both the public and private health care
103 sectors. Moreover, public disclosure of health information could
104 have a negative effect upon a person's business and personal
105 relationships, and could also have detrimental financial
106 consequences.

107 Section 3. This act shall take effect October 1, 2007.

PCB GEAC 07-15 Summary

Examination and Investigation Duties

The Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS) each have regulatory powers related to insurance. OIR is responsible for all activities concerning insurers and other risk-bearing entities such as licensing, solvency, rates, and policy forms. DFS is responsible, among other duties, for the regulation of insurance representatives and other individuals who are licensed to sell insurance-type products.

OIR conducts market conduct examinations and financial oversight examinations of authorized insurers as often as it deems necessary in order to review the insurers' affairs, records, transactions, accounting procedures and financial condition and to ascertain compliance with the applicable provisions of the Insurance Code. These examinations scrutinize property, casualty, life, and health insurance entities. Rather than conduct all reviews on a calendar basis, industry problems are identified through market analysis by trending patterns and practices of consumer complaints, financial data, and other data available through market and environmental sources. Once adverse business practices are identified, specific companies, markets, or insurance products are examined.

Both OIR and DFS have the authority to conduct investigations of insurers and insurance representatives if either agency has reason to believe that the Insurance Code has been or is being violated or it receives a complaint indicating that a violation may exist.

Public Records Exemptions for Examinations and Investigations

OIR is required to make public the report of each examination; however, such reports are confidential and exempt from public records requirements until filed. Each examination report must contain only information obtained from the examination of records, accounts, and documents relating to the insurer examined or from testimony of individuals taken under oath, together with relevant conclusions and recommendations of the examiner. A copy of the report must be furnished to the insurer examined within 30 days prior to the filing of the report.

Investigation reports are confidential and exempt until the investigation has been completed or ceases to be active. Portions of the investigation report, however, may remain confidential and exempt if disclosure would:

- Jeopardize the integrity of another active investigation;
- Impair the safety and financial soundness of the licensee or affiliated party;
- Reveal personal financial information;
- Reveal the identity of a confidential source;

- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- Reveal investigative techniques or procedures.

Public Records Exemption under Review

Current law also provides a public records exemption for work papers and other information held by DFS or OIR, and work papers and other information received from another governmental entity or the National Association of Insurance Commissioners, for use by DFS or OIR in the performance of its examination or investigation duties.

Such confidential and exempt information may be disclosed to:

- Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; and
- The National Association of Insurance Commissioners.

The law does not provide a definition of work papers, which is a broad term. In addition, it is unclear what “other information” would not be included as part of the exemption for “work papers”. Furthermore, the current exemptions for investigation and examination reports expire when the investigation ceases to be active or the examination report is filed whereas the work papers exemption for those examinations and investigations does not expire.

Proposal

This proposal defines the term “work papers”. It also provides the same expiration criteria as that found in the public records exemptions for investigation and examination reports.

DRAFT – PCB GEAC 07-15

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding work papers; amending s.
624.319, F.S.; reorganizing the exemption; narrowing the
exemption for work papers; creating a definition;
providing for expiration of the exemption; making
editorial changes; deleting unnecessary language; deleting
the provision that provides for repeal of the exemption
under the Open Government Sunset Review Act; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 624.319, Florida
Statutes, is amended to read:

624.319 Examination and investigation reports.--

(3)(a)1. Examination reports, until filed, are confidential
and exempt from ~~the provisions of~~ s. 119.07(1).

2. Investigation reports are confidential and exempt from
~~the provisions of~~ s. 119.07(1) until the investigation is
completed or ceases to be active.

3. For purposes of this subsection, an investigation is
active while it is being conducted by the department or office
with a reasonable, good faith belief that it could lead to the
filing of administrative, civil, or criminal proceedings. An
investigation does not cease to be active if the department or
office is proceeding with reasonable dispatch and has a good
faith belief that action could be initiated by the department or
office or other administrative or law enforcement agency. After

DRAFT – PCB GEAC 07-15

ORIGINAL

YEAR

an investigation is completed or ceases to be active, portions of the investigation report relating to the investigation remain confidential and exempt from ~~the provisions of~~ s. 119.07(1) if disclosure would:

~~a.1.~~ Jeopardize the integrity of another active investigation;

~~b.2.~~ Impair the safety and financial soundness of the licensee or affiliated party;

~~c.3.~~ Reveal personal financial information;

~~d.4.~~ Reveal the identity of a confidential source;

~~e.5.~~ Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

~~f.6.~~ Reveal investigative techniques or procedures.

(b)1. For purposes of this paragraph, “work papers” means the records of the procedures followed, the tests performed, the information obtained and the conclusions reached in an examination or investigation performed under ss. 624.316, 624.3161, 624.317, and 624.318. Work papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedule or commentaries prepared or obtained in the course of such examination or investigation.

2. ~~Work papers and other information~~ held by the department or office, ~~and work papers and other information received from another governmental entity or the National Association of Insurance Commissioners, for the department's or office's use in the performance of its examination or investigation duties pursuant to this section and ss. 624.316, 624.3161, 624.317, and~~

DRAFT – PCB GEAC 07-15

ORIGINAL

YEAR

624.318 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to work papers and other information held by the department or office before, on, or after the effective date of this exemption.

3. Such Confidential and exempt work papers information may be disclosed to:

a. Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; ~~and may be disclosed to~~

b. The National Association of Insurance Commissioners. ~~The receiving governmental entity or the association must maintain the confidential and exempt status of the information. The information made confidential and exempt by this paragraph may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status of such information is maintained. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.~~

4. After an examination report is filed or an investigation is completed or ceases to be active, portions of the work papers may remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure would:

a. Jeopardize the integrity of another active examination;

b. Impair the safety and financial soundness of the licensee or affiliated party;

c. Reveal personal financial, medical, or health information;

DRAFT – PCB GEAC 07-15

ORIGINAL

YEAR

- 88 d. Reveal the identity of a confidential source;
 89 e. Defame or cause unwarranted damage to the good name or
 90 reputation of an individual or jeopardize the safety of an
 91 individual; or
 92 f. Reveal examination techniques or procedures.

93 (c) Lists of insurers or regulated companies are
 94 confidential and exempt from ~~the provisions of~~ s. 119.07(1) if:

- 95 1. The financial solvency, condition, or soundness of such
 96 insurers or regulated companies is being monitored by the office;
 97 2. The list is prepared to internally coordinate regulation
 98 by the office of the financial solvency, condition, or soundness
 99 of the insurers or regulated companies; and
 100 3. The office determines that public inspection of such
 101 list could impair the financial solvency, condition, or soundness
 102 of such insurers or regulated companies.

103 Section 2. This act shall take effect October 1, 2007.

PCB GEAC 07-16

Summary

Unclaimed Property

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time. Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are potentially unclaimed property. Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department of Financial Services (DFS). If the property remains unclaimed, all proceeds from abandoned property are deposited by DFS into the Department of Education School Trust Fund (State School Fund), except for a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims. Approximately \$1.5 billion has been transferred to the Department of Education since the program's inception, including \$267,095,187 transferred to the State School Fund in fiscal year 2005-2006.

Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act serves to protect the interest of missing owners of property while the people of the state derive a benefit from the unclaimed and abandoned property until the property is claimed, if ever. DFS administers the Act through its Bureau of Unclaimed Property.

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within 180 days after an account becomes inactive (two years). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1, for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. The report generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.

Current law places an obligation on the state to notify owners of unclaimed property accounts valued at over \$250, in a cost-effective manner, including through attempts to directly contact the owner. DFS indicates that the means used to find lost property owners include social security numbers, direct mailing, motor vehicle records, state payroll records, newspaper advertisements, and a state website where unclaimed property can be found.

Attorneys, Florida-certified public accountants, Florida-licensed private investigators, and Florida-licensed private investigative agencies register with DFS in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and

receive a distribution of fees and costs from DFS. Claimants' representatives utilize compact discs produced by the Bureau of Unclaimed Property that contain information describing the unclaimed property and identifying the owner to assist them in finding the owners of unclaimed property.

Public Records Exemption under Review

Currently, the law provides a public records exemption for social security numbers and financial account numbers contained in reports of unclaimed property. It also authorizes DFS to release social security numbers paired with descriptions of unclaimed property to representatives for registered claimants for the limited purpose of finding the owners of unclaimed property.

The law does not provide a definition of financial account numbers. Also, as part of the committee's review of the exemption, it was discovered that not all unclaimed property is identified by a financial account number.

Proposal

This proposal recommends reenactment of the current public records exemption with modifications. It replaces the term "financial account numbers" with the more accurate term "property identifier". A public necessity statement has been included in the proposal because the change in terms is considered an expansion of the current public records exemption.

DRAFT – PCB GEAC 07-16

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding reports of unclaimed property;
amending s. 717.117, F.S.; expanding the exemption to
include property identifiers; creating a definition;
reorganizing the exemption; providing for future review
and repeal of the exemption; providing a statement of
public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 717.117, Florida
Statutes, is amended to read:

717.117 Report of unclaimed property.--

(8)(a) For purposes of this subsection, "property
identifier" means the descriptor used by the holder to identify
the unclaimed property.

(b) Social security numbers and property identifiers
~~financial account numbers~~ contained in reports required under
this section, held by the department, are confidential and exempt
from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) ~~Notwithstanding this exemption,~~ Social security numbers
shall be released, for the limited purpose of locating owners of
abandoned or unclaimed property, to a person registered with the
department under this chapter who is:

1. An attorney;
2. A Florida-certified public accountant;
3. A private investigator who is duly licensed in this
state; or

DRAFT – PCB GEAC 07-16

ORIGINAL

YEAR

4. A private investigative agency licensed under chapter 493 ~~and registered with the department under this chapter.~~

(d) This exemption applies to social security numbers and property identifiers ~~financial account numbers~~ held by the department before, on, or after the effective date of this exemption.

(e) This subsection is subject to the Open Government Sunset Review Act ~~of 1995~~ in accordance with s. 119.15, and shall stand repealed October 2, 2012 ~~2007~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that property identifiers contained in reports of unclaimed property be made confidential and exempt from public records requirements. Property identifiers, which are descriptors used by a holder to identify unclaimed property, could be used to obtain fraudulently unclaimed funds or property. Protection of property identifiers is a public necessity in order to prevent the fraudulent use of such information for purposes of creating falsified or forged documents that demonstrate entitlement to unclaimed property. Such use defrauds the rightful property owner or the State School Fund. Furthermore, the release of property identifiers contained in reports of unclaimed property hinders the effective and efficient administration of the unclaimed property program.

Section 3. This act shall take effect October 1, 2007.